(15,618)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 126.

RANSOM PAYNE, APPELLANT,

vs.

W. S. ROBERTSON, JOHN FOSTER, A. C. SCHNELL, AND XENOPHON FITZGERALD.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

INDEX.

	Original.	Print.
Transcript from district court	1	1
Complaint	1	1
Exhibit A—Receiver's receipt, April 23, 1889	16	9
B—Protest against final proofs	17	10
Notice to make proofs	19	11
Application of Payne	21	11
Affidavit of Payne	22	12
Testimony of James O. Severns	23	13
Richard J. Stumpff	24	14
Harper J. Cunningham	26	15
Ransom Payne	27	17
Final affidavit	28	19
Demurrer	29	19
Decree	33	21

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 17, 1896.

	Original.	Print.
Bond	34	22
Præcipe for transcript of record	36	23
Clerk's certificate	37	23
Assignment of errors	38	23
Joinder in error	43	26
Submission	44	26
Opinion	45	27
Decree	46	27
Allowance of appeal	46	28
Assignment of errors	47	28
Bond	51	29
Clerk's certificate	53	30

1 TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

In the District Court for the County and Territory Aforesaid, First Judicial District, of the March Term, 1892.

RANSOM PAYNE, Plaintiff,
against
W. S. ROBERTSON, JOHN FOSTER, A. C. SCHNELL, and ZENOPHON FITZGERALD, Defendants.

The plaintiff, Ransom Payne, complains of W. S. Robertson, John Foster, A. C. Schnell, and Zenophon Fitzgerald, defendants herein, and for cause of action says—

That the plaintiff is a citizen of the United States and a resident of Logan county, in said Territory of Oklahoma; that prior to and on the 22nd day of April, 1889, A. D., he was a deputy United States marshal, and had been duly appointed and qualified as such deputy marshal for the district of Kansas, to which district that part of the Territory known as Oklahoma was by act of Congress in such case made and provided attached for judicial purposes; that his appointment as such United States deputy marshal and his qualifying as such took place prior to the passage of the act of Congress of March 2nd, 1889, providing for opening the Oklahoma lands for settlement.

That after the passage of the aforesaid act of Congress and after the issuance of the proclamation of the President of the
2 United States of date of March 23rd, 1889, declaring said land open to homestead settlement on and after 12 o'clock noon on the 22nd day of April, 1889, that plaintiff was ordered by his superior officer, the marshal of the United States for the aforesaid district, to go into said Territory as deputy marshal aforesaid and to the locality where the United States land office at Guthrie was located; and the plaintiff, as a deputy United States marshal, in obedience to the aforesaid order and direction of his superior officer and in the discharge of his official duties as such officer, was, at noon on said 22nd day of April, 1889, at or near the United States land office at Guthrie, in said Territory, for the purpose of maintaining the peace and seeing that public order was maintained and to arrest violators of the law; and being so rightfully in said Territory in the discharge of his official duties and in obedience to the orders of his superior officer, and having all the qualifications required under the acts of Congress in such cases made and provided and under the provisions of said act of Congress of March the 2nd, 1889, providing for the opening of the Oklahoma lands to settlement, entitling him to take and hold a homestead of 160 acres of land in said Territory, he did, after 12 o'clock noon on said 22nd day of April, 1889, settle upon the N. W. ¼ of sec. nine, township sixteen (16), range two (2) W.; that he at once commenced digging a well on said tract of land and claimed the same as

his homestead; that he afterwards, on the 23rd day of April, 1889, duly entered the same at the United States land office in Guthrie, Oklahoma Territory, and paid fourteen dollars, being the Government price and charges for the entry of said land as a homestead, and received the duplicate receipt of
3 the receiver of said land office, a copy of which is herewith filed, marked Exhibit "A," and made a part of the complaint; that by virtue of said settlement, entry, and payment as aforesaid the plaintiff acquired the equitable title to said tract of land; that he built a house thereon and enclosed a part thereof; that since his aforesaid settlement he has continued to reside upon and cultivate the land so enclosed as his homestead, and still continues to reside upon and use and cultivate all of said land not occupied by intruders thereon; that his said settlement and entry as aforesaid were made in good faith and for the *bona fide* purpose of acquiring the same as a homestead under the homestead law, and that he has in all respects fully complied with all the requirements of the homestead law; that he was and is a citizen of the United States, over twenty-one years of age; that he has never entered upon and occupied any part of the land opened to homestead settlement under the provisions of the act of Congress dated March 2nd, 1889, and the proclamation of the President of the United States of date of March the 23rd, 1889, after the passage of said act and prior to noon of April 22nd, 1889; that the only entry he ever made into said Territory between March 2nd, 1889, and noon on the 22nd day of April, 1889, was the entry aforesaid as a deputy United States marshal rightfully in the discharge of his official duties as such deputy marshal and in obedience to the orders and directions of the United States marshal for the district of Kansas, to which district said Territory of Oklahoma was attached for judicial purposes at that time; and at the time of said entry by plaintiff as aforesaid he had formed no purpose or intention in regard to selecting and taking a homestead when said land should be duly opened to settlement under the aforesaid act of Congress and the proclaSmation of the President of the United States; that he has not entered upon and occupied any portion of the lands embraced in said proclamation within the meaning, letter, and spirit of said act of March 2nd, 1889, prior to 12 o'clock noon of said day, but made such entry into said Territory as aforesaid as a deputy United States marshal, and remained therein up to 12 o'clock noon on said 22nd day of April, 1889, in obedience to the orders of the United States marshal, whose jurisdiction embraced and extended over all the Territory to be opened to homestead settlement as aforesaid, and whose deputy, duly appointed and qualified, the plaintiff was at the time, and for the legal, rightful, and proper purposes aforesaid, and it was the duty and right of the plaintiff, in obedience to his aforesaid orders of his superior officer, to be and remain in said Territory as aforesaid, the commissioner of public lands having been applied to by and on behalf of persons so in the Territory as plaintiff prior to the 22nd day of April,

1889, to know if so remaining in the Territory would in any way interfere with them taking and holding a homestead under said act of Congress of March 2nd, 1889, and said commissioner of public lands, in response to such inquiry and for the information of such persons so in said Territory as United States officers in the discharge of their duties, prepared a letter directed to the Hon. John J. Ingalls, then a United States Senator, which letter was before being sent to said Ingalls submitted to the Hon. John W. Noble, then Secretary of the Interior, and approved by him, in which letter, among other things, it was distinctly stated that in the opinion of said commissioner, and which opinion had been approved by the Secretary of the Interior as aforesaid, that persons in official positions and in the Territory in discharge of
5 the duties of such positions would not be thereby disqualified from taking and holding homesteads in said Territory, and that while said law contained no exceptions such parties would not come within its spirit and purpose, nor was anything said in said letter and opinion about going outside the Territory and coming in from there on the 22nd day of April, after 12 o'clock noon of said day. The substance of said letter, with others, showing the opinion of the commissioner of public lands and the Secretary of the Interior, was embodied in a circular of instructions and information, and widely circulated before the 22nd of April, 1889, for the information of such officers and the public; and relying upon the opinion and assurances contained in said letter and circular, together with other assurances and opinions of said Secretary of the Interior, given to the Hon. William M. Springer, then a member of Congress, who, prior to the 22nd day of April, 1889, was telegraphed to by a party who was offered the position of a deputy United States marshal for said Territory, and who was unwilling to accept said office if it would deprive him of his right to take and hold a homestead when the country should under the President's proclamation be opened to settlement; and said Secretary of the Interior, in reply and answer to said inquiry, made the following response after reading the telegram of inquiry: Tell him to take said office and he would see that he was protected in his rights to acquire a homestead. Relying on these opinions and assurances, said plaintiff remained in the Territory as aforesaid, and being so rightfully in said Territory, and having all the qualifications entitling him to take and hold a homestead as aforesaid, and after 12 o'clock noon of said 22nd day of April, 1889, when,
6 under the act of Congress and the proclamation of the President issued in pursuance thereof, said lands were legally opened to all qualified homestead settlers, the plaintiff did in good faith and rightfully settle upon said tract of land as his homestead, and on the day aforesaid rightfully make his application to the United States land office at Guthrie, pay for and enter said land as aforesaid, and has ever since said settlement and entry as aforesaid been the equitable owner of said land, and had a vested equitable right therein under the Constitution and laws of the United States,

and a superior right and equity over all other persons in and to said land by reason of the premises aforesaid.

The plaintiff, further complaining, states and shows to the court that after he had went upon and made settlement upon said tract of land in the manner and at the time aforesaid and had become entitled to hold the same as his homestead by reason of his aforesaid prior, legal, and rightful settlement and entry, that various other parties entered upon said tract of land, although notified at the time of such entry that the plaintiff had made prior settlement thereon and claimed the same as his homestead and was engaged in digging a well and making other valuable improvements thereon and still resides upon and cultivates said land, so far as he has possession thereof. Among the persons so coming upon said tract of land *were* the defendant Zenophon Fitzgerald, who settled upon and claimed the same as a homestead, and numerous other parties came upon said tract of land after it had been settled upon and was occupied by plaintiff as aforesaid, and by force and over the notice and warnings of the plaintiff proceeded to stake off and
7 occupy a large part of said tract of land as a town site, in violation of law and of the prior and superior homestead right of the plaintiff.

That afterwards, to wit, on the 9th day of May, 1889, and other days, contests were filed against the plaintiff in the United States land office at Guthrie, Oklahoma, for the purpose of securing the cancellation of plaintiff's aforesaid homestead filing by the following-named parties, T. H. Soward *et al.*, who claimed to represent a town-site company and who had entered the Territory before noon on the 22nd day of April, 1889, and were hid in the brush until the hour of noon, and then came upon the land after plaintiff had settled upon it as aforesaid; that trials were had of said contest before the register and receiver of the United States land office at Guthrie, before th commissioner of public lands, and a final hearing and determin ion was had before the Secretary of the Interior on the 22nd day of June, 1891; that the Secretary ordered the homestead entry No. 4 of plaintiff's be cancelled and that the land be given to the said town-site claimants of East Guthrie, thereby affirming the ruling previously made by the commissioner of public lands cancelling said entry; that as to claim, settlement, and filing of the plaintiff the Secretary made a finding of facts and ruling, which is in the words and figures following:

"Ransom Payne made homestead entry for the N. W. ¼ of section nine (9) on April 23rd, 1889. Said Ransom Payne was a United States deputy marshal, duly appointed prior to the passage of the act of March 2nd, 1889 (16 C. L. O., 10, 11), providing for the opening of the Territory of Oklahoma to settlement, and prior to the proclamation of the President fixing the day for said open-
8 ing, and he entered said Territory prior to April 22nd, and was there at noon of that day in obedience to orders issued by his superior officer, and he was there in the discharge of his official duties. Immediately after 12 o'clock noon of April 22nd he went upon the land in question and commenced to dig a hole in

the ground for a well and as soon as practicable appeared at the local office and made his entry. So far as his age, citizenship, etc., are concerned he was a qualified homestead claimant, and he bases his claim upon his prior settlement. Your office held his entry for cancellation on the ground that he had entered the Territory prior to the time fixed in the proclamation of the President, basing said decision on the decision of the department in the case of The Town Site of Kingfisher *vs.* Wood *et al.* (11 L. D., 330; 17 C. L. O., 164, 246, 248).

Payne appeals, and his counsel earnestly contend that their client does not come within the terms of said decision, but if it should be held that he does come within its terms they ask that said decision be modified in so far as it applies to persons situated as Payne was, viz., lawfully in the Territory in the discharge of his official duties at the hour of 12 o'clock noon, April 22nd, 1889." This covers the facts so far as found and commented upon by the Secretary of the Interior in rendering his findings, rulings, and opinion in the case.

The plaintiff further states that the Secretary of the Interior in construing the act of Congress of March 2nd, 1889, under which the lands in said Territory were opened to settlement, misconstrued and misapplied the laws applicable to the following provision of the act of Congress aforesaid:

9 "And provided further, that each entry shall be in a square form as near as practicable, and no person shall be permitted to enter more than one-quarter section thereof; but until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon or occupy the same, and no person violating this provision shall ever be permitted to enter any of said lands or acquire any right thereto."

The plaintiff further states that the Secretary of the Interior in his aforesaid ruling and findings in said case misapprehended and misconstrued the language of the proclamation of the President of the United States issued March 23rd, 1889, fixing the time when the land of said Territory, acquired as described in said proclamation, should be open for homestead settlement, and also misapprehended and misconstrued and misapplied the law to the language and provisions of said proclamation, and especially as to the following part of said proclamation, which is in words and figures following:

"Now, therefore, I, Benjamin Harrison, President of the United States, by virtue of the power in me vested by the said act of Congress approved March the second, eighteen hundred and eighty-nine, aforesaid, do hereby declare and make known that so much of the lands aforesaid acquired from or conveyed by the Muscogee (or Creek nation of Indians, and from or by the Seminole nation of Indians, respectively, *or* is contained within the following-described boundaries)" (boundaries omitted), "will at and after the hour of twelve o'clock noon of the 22nd day of April next, and not before, be open to settlement under the terms and subject to all the

10 conditions, limitations, and restrictions contained in said

act of Congress approved March 2nd, eighteen hundred and eighty-nine, aforesaid, and warning is hereby again expressly given that no person entering upon and occupying said lands before the hour of twelve o'clock noon of the twenty-second day of April, A. D. eighteen hundred and eighty-nine, hereinbefore fixed, will ever be permitted to enter any of said lands or acquire any right thereto, and the officers of the United States will be required to strictly enforce the provision of the act of Congress to the above effect."

The plaintiff further states that the Secretary of the Interior, in this determination and in his rulings in relation to the settlement and entry of the aforesaid tract of land by the plaintiff as aforesaid, misconstrued and misapplied the law to the facts as found aforesaid, and that, under the aforesaid act of Congress and the proclamation of the President and the facts as found and admitted, the plaintiff was and is a prior settler and entryman, rightfully, legally, and equitably entitled to the aforesaid tract of land as his homestead, and the finding of the Secretary of the Interior should have been for the plaintiff and not for the settlers of the town of East Guthrie, as held by said Secretary, and to whom the said tract of land was awarded by the Secretary in violation of law and the rights of the plaintiff, he having, under a proper construction of the law and application of the same to the facts established and found, the superior equity and equity right to said tract of land, and the Secretary of the Interior erred and misconstrued the act of Congress and the proclamation of the President of the United States and all and every rule and principle of law applicable to the construction of said act of Congress and proclamation in holding said entry of com-
11 plainant for cancellation and ordering the same to be cancelled, and attempting to divest the complainant of his vested rights under the Constitution and laws of the United States, of his equitable right, interest, and title in and to said land under his homestead entry and settlement aforesaid, and in violation of every principle of law and equity on the facts aforesaid, and giving said tract of land to the town-site claimants aforesaid.

The complainant further states and shows to the court that after making the findings and rulings aforesaid the Secretary of the Interior appointed the defendants W. S. Robertson, John Foster, and A. C. Schnell as a special town-site board to prove up and enter the aforesaid tract of land, in trust for the inhabitants of the so-called town of East Guthrie, and to make and execute deeds to the occupants thereof as their respective rights and interests may appear; that said defendants, as such special town-site board, have proved up and entered said tract of land and obtained a final certificate and patent for the same, and that the legal title to said tract of land has passed from the United States and is now vested in said defendants as aforesaid.

The complainant further states that at the time and place mentioned in the notice of said commissioner to make such final proof he duly appeared before the hons. register and receiver of the United States land office at Guthrie, Oklahoma Territory, and presented proof of his residence and cultivation upon the land above

described, and tendered to said receiver the purchase price for the same, under sec. 21 of the act of May 2nd, 1890, viz., the sum of
12 $200.00, lawful money of the United States; that said proof was rejected and the said purchase-money refused "for the reason that H. E. No. 4 had been cancelled by order of the Secretary of the Interior and the land within described awarded to the town-site claimants;" "fees tendered;" that *is* a true and correct copy of said final proof and all the affidavits connected therewith, together with the rejection and refusal of money tendered, endorsed thereon, is hereto attached and hereby made a part of this complaint as fully as though the same was herein written, the same being marked Exhibit "B."

That said plaintiff has done all things required by law of him in order to be entitled to his final patent, conveying to him the full, legal, and equitable title to said land, and but for the error aforesaid of the Hon. Secretary of the Interior in misconstruing the law aforesaid the said patent would have been issued to him, the plaintiff, instead of to the said defendants, John Foster, A. C. Schnell, and W. S. Robertson, and he has by such erroneous decision and construction of the law by the Hon. Secretary been deprived of the evidence of his legal title to said land.

The complainant further states that the superior right and equity in and to said tract of land, under the Constitution and laws of the United States and under the plaintiff's aforesaid settlement and entry and the aforesaid facts as found by the Secretary of the Interior, is still in the plaintiff, and that he has never been legally, under the Constitution and laws of the United States, by the decision of any judicial tribunal, divested of his rights, title, and equity in and to said tract of land acquired as aforesaid, and that said defendants, as a town-site board aforesaid, have acquired the legal title thereto and hold the same subject to all the equities and rights of plaintiff therein; that the Secretary of the Interior misconstrued and
13 misapplied the law to the facts found by him as aforesaid; that plaintiff, being a qualified person to take and hold a homestead, and legally in said Territory as aforesaid, under the facts as found and under the rulings of the said Secretary, after twelve o'clock noon of said 22nd day of April, 1889, had a legal right to settle upon said tract of land, and did so settle upon and did so enter the same and thereby acquired a vested right in and to said tract of land and became the equitable owner thereof; and the aforesaid cancellation of his said homestead entry was and is in violation of the law and a wrongful and erroneous construction and application and interpretation of the aforesaid act of Congress and the proclamation of the President of the United States, and in violation of the rights of plaintiff under the Constitution and laws of the United States and contrary to equity and justice; and a trust in favor of the plaintiff attaches to said tract of land in equity, which the plaintiff asks to have declared and established.

The plaintiff states that no town-site settlers were on said tract of land when plaintiff inaugurated his settlement thereon as aforesaid; that by said settlement he acquired the right thereto as a

prior settler under the provisions of the act of Congress passed and approved May the 14th, 1880, and was and is the first legal and prior settler on said land, and under the provisions of the aforesaid act and the act of Congress passed and approved March 2nd, 1889, opening said land to homestead settlement, and under the homestead laws of the United States in force and effect on the 22nd day of April, 1889, and under the aforesaid homestead entry and payment for said land the plaintiff has acquired and now holds the superior equity and right to said tract of land; that plaintiff's aforesaid settlement was prior to that of the said Zenophon Fitzgerald,
14 who sets up a claim to said land as a homestead settler, and prior to that of any and all other settlers, whether claiming as town-site or homestead settlers; that said land is of the actual value of ($10,000.00) ten thousand dollars.

That said tract of land is no part of the three hundred and twenty acres on which the town of Guthrie proper is built and on which the United States land office was and is located, and was not in any manner reserved or withdrawn from homestead settlement under any law of the United States then in force, and was open and subject to settlement and entry for homestead purposes, and was so entered by the plaintiff in good faith as his homestead aforesaid.

The plaintiff further states that the said defendants, W. S. Robertson, John Foster, and A. C. Schnell, are about to commence making deeds for said tract of land to the various intruders and occupants who are claiming the same as a town site, and unless enjoined and restrained by this honorable court they will make and deliver deeds to various persons for portions thereof, thereby clouding plaintiff's right and requiring multiplicity of suits to set aside and cancel such conveyances and suit in ejectment or other action at law to dispossess them.

The plaintiff, being without any remedy at law, asks that his right, equity, and title in and to said tract of land be established; that a resulting trust be declared and established to said tract of land in favor of plaintiff; that said defendants, as a town-site board, be divested of the legal title, and that the same be vested in the plaintiff, he being ready and willing, should the court so decree, to pay the two hundred dollars for said tract of land by said town-site board and to do equity on the premises; that said town-site board be restrained and enjoined from making deeds or conveyances for any part of said tract of land to any one.

15 And on final hearing he prays for all other and further relief which to equity pertaineth and the nature and facts of the case require.

AMOS GREEN,
HARPER S. CUNNINGHAM,
Attorneys for Plaintiff, with
COPP AND LUCKET AND
J. R. HALLOWELL,
Advising Counsel.

TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

Ransom Payne, plaintiff, states that he has read the foregoing complaint and he believes the matters and things as therein stated are true.

RANSOM PAYNE.

Subscribed and sworn to before me this 1st day of February, A. D. 1893.

T. G. RISLEY, *Clerk.*

16 EXHIBIT "A."

(4–138.)

Receiver's duplicate receipt No. 4. Application No. 4.

Homestead.

RECEIVER'S OFFICE, GUTHRIE, I. T., *April 23rd*, 1889.

Received of Ransom Payne the sum of fourteen dollars — cents, being the amount of fee and compensation of register and receiver for the entry of N. W. ¼ of section 9, in township 16 N., of range 2 W., under section 2290, Revised Statutes of the United States.

$—. C. M. BARNES, *Receiver.*

NOTE.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five years on his tract he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and cultivation from date of filing affidavit to the time of payment.

[On the margin:] Taken subject to the reservation of an acre of land in square form in the N. W. corner of the tract; also subject to S. D. S. No. 2, made by James H. Huckelberry on the 22nd day of April, 1889.

16½ [Endorsed:] Filed for record on the 24th day of Sept., 1890, at 11 o'clock a. m., and duly recorded in Book 1 of Deed Record, at page 105. Lewis H. Laws, dist. clerk, by Boles, deputy.

17 Before the United States land office.

GUTHRIE, OKLAHOMA, *Dec. 14th*, 1891.

In the Matter of the Application of JOHN FOSTER, WILLIAM S. ROBERTSON, and ANDREW C. SCHNELL to Make Final Proof of the Northwest ¼ of Sec. 9, T'p 16 N., R. 2 West.

Protest Against said Final Proof and Application to Make Commutation Entry of H. E. No. 4 at the Guthrie Land Office by Ransom Payne.

Comes now Ransom Payne, the homestead entryman who made homestead entry No. 4 for the above-described land, and hereby enters his protest against the making of said final proof by the said parties and objects thereto for the following reasons, to wit:

First. For that the said quarter section of land is now covered by his homestead entry No. 4 and the same has not been rightfully cancelled by any competent authority.

Second. For that under and by virtue of said homestead entry No. 4 and the homestead laws of the United States the said Ransom Payne is the owner and possessor of the equitable title to said land, to the exclusion of any interest whatever in the above-named parties or any other person or persons whomsoever.

Third. For that if said final proof be allowed by the register and receiver said action will cast a cloud upon the said title of the said Ransom Payne and be productive of much litigation and great hardship to him in the prosecution of his said title to said land.

Fourth. For that the action of the local land office and the Commissioner of the General Land Office and the Secretary of the Interior in holding his said entry No. 4 for cancellation is a
18 plain and palpable violation of the law and of his rights as a homestead entryman under the law, and such action is absolutely and utterly null and void and of no effect.

Wherefore the said Ransom Payne prays that the hon. register and receiver may reject said proof and deny to said applicant the right to prove and pay the purchase price of the land in question.

Affiant further prays that he may be allowed under their said notice, which is hereto attached, marked Exhibit "A," and is hereby made a part hereof, to make proof and payment for said land, as provided for by section 21 of the act of March 2nd, 1890, providing for commutations of homesteads in the Territory of Oklahoma; and to that end herewith tenders and makes a part of this protest and prayer an application to enter said land, the final affidavit required by law, and the proof of two witnesses of the facts which entitle him to make this final proof, and the same is hereto attached and marked Exhibit "B;" and the said Ransom Payne also herewith tenders the sum of $200.00 as the purchase price of said land and the fees and commissions of the register and receiver in addition thereto.

RANSOM PAYNE.

Ransom Payne, being first duly sworn, says that all the foregoing

statements of facts are true; that all the foregoing inferences and deductions he believes to be true.

RANSOM PAYNE.

Subscribed and sworn to Dec. 14, 1891.

JOHN I. DILLE, *Register.*

19 EXHIBIT "A."

Notice of Intention to Make Proof on Application to Enter the Town Site of East Guthrie.

UNITED STATES LAND OFFICE,
GUTHRIE, OKLAHOMA, *December* 7, 1891.

Notice is hereby given that the undersigned, John Foster, William S. Robertson, and Andrew C. Schnell, as trustees appointed under and by virtue of an act of Congress approved May 14th, 1890, and assigned by the honorable Secretary of the Interior to East Guthrie, in said Territory, did, on the 7th day of December, 1891, file in the land office at Guthrie, Oklahoma, an application to enter the west half of section nine, township sixteen north, of range two west, of the Indian meridian, as a town site for the use and benefit of the several occupants thereof, according to their respective interests, under the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of public lands," and the acts supplemental thereto, including the act of May 14th, 1890; that on said application a hearing has been ordered and set for December 14, 1891, at 9 o'clock a. m., and to be continued from day to day until completed, at which time evidence will be admitted relating—

First. To the municipal occupation of such land.

Second. Number of inhabitants.

Third. Extent and value of town improvements.

Fourth. Date when land was first used for town-site purposes and the continuance of such use.

20 Fifth. Non-mineral character of such land.

The following persons are named as witnesses: Thomas A. Stockslager, Charles A. Berger, Frank Olsmith, Samuel W. Watkins, all of Guthrie, Oklahoma Territory.

JOHN FOSTER.
WILLIAM S. ROBERTSON,
ANDREW C. SCHNELL, *Trustees.*
C. M. BARNES, *Receiver.*

Filed Feb. 2nd, 1892.

T. G. RISLEY,
Clerk Dist. Court.

21 EXHIBIT.

LAND OFFICE AT GUTHRIE, O. TY., *December* 14, 1891.

I, Ransom Payne, of Guthrie, county Logan, do hereby apply to purchase the northwest quarter (¼), section nine (9), in township

sixteen (16), of range two (2) W., containing 160 acres, according to the returns of the surveyor general, for which I have agreed with the register to give at the rate of $1.25, one dollar and twenty-five cents, per acre.

RANSOM PAYNE.

Fees and purchase price tendered and refused.

C. M. BARNES, *Receiver.*

Filed Feb. 2nd, 1892.

T. G. RISLEY,
Clerk Dist. Court.

22 (To be used in cases of commuted homestead entries in Oklahoma Territory.)

Affidavit Required of Claimant.

(Section 21 of act of May 2, 1890.)

I, Ransom Payne, claiming the right to commute, under section 21 of the act of May 2, 1890 (Statutes First Session, Fifty-first Congress, page 81), my homestead entry No. 4, made upon the northwest quarter of section nine, township sixteen, range two west, do solemnly swear that said lands or any part thereof are not occupied, required, or intended for town-site purposes, except by certain trespassers who are doing so without his consent, and that said entry, in whole or in part, is not made for the benefit of any other person, persons, or corporation, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, for town-site or other purposes; that I have not directly or indirectly made nor is it my present intention to make any agreement or contract in any way or manner with any person or persons, corporation, or syndicate whatsoever, except as provided in section 2288 of the Revised Statutes, by which the title which I may acquire from the Government of the United States shall inure in whole or in part to the benefit of any person except myself.

RANSOM PAYNE.

Subscribed and sworn to before me this 14th day of December, 1891.

JOHN I. DILLE, *Register.*

Filed Feb. 2nd, 1892.

T. G. RISLEY,
Clerk Dist. Court.

23 (4–369.)

Homestead Proof. Testimony of Witness.

JAMES O. SEVERNS, being called as witness in support of the homestead entry of Ransom Payne for N. W. ¼ sec. 9, 16, 2 W., testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. Guthrie, O. Ty.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town or used in any way for trade or business?

Ans. Yes; East Guthrie embraces it.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Good, arable farming land.

Ques. 5. When did claimant settle upon the homestead and at what date did he establish actual residence thereon?

Ans. April 22, 1889; built a house soon after, about May 11, 1889.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. I know nothing of his family. He has resided on the land, to my knowledge, since the opening of the country for settlement.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and, if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. His residence has been continuous except temporary absences for short periods, performing the duties of a United States marshal's deputy.

Ques. 8. How much of the homestead has the settler cultivated and for how many seasons did he raise crops thereon?

Ans. About 10 acres; raised crops for three years.

Ques. 9. What improvements are on the land and what is their value?

Ans. 1 house 12 x 14, 1 house 8 x 12, well, and fencing, all of the value of $185.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim, and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I think he is acting in good faith.

JAMES O. SEVERNS.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 14 day of Dec., 1891.

JOHN I. DILLE, *Reg.*

(See note on fourth page.)

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

24 & 25 (4–369.)

Homestead Proof. Testimony of Witness.

RICHARD J. STUMPFF, being called as witness in support of the homestead entry of Ransom Payne for N. W. ¼ sec. 9, 16, 2 W., testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. Richard J. Stumpff.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town or used in any way for trade or business?

Ans. Yes; part of East Guthrie.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Good arable land.

Ques. 5. When did claimant settle upon the homestead and at what date did he establish actual residence thereon?

Ans. He was residing upon said land when I came to Oklahoma on April 27th, 1889, and has resided there ever since.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. I know nothing of his family; he himself has been residing on the land ever since the opening of the country to settlement.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and, if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. His residence has been continuous; he has been temporarily

absent, performing the duties of U. S. deputy marshal, for short periods of time.

Ques. 8. How much of the homestead has the settler cultivated and for how many seasons did he raise crops thereon?

Ans. He has enclosed about ten acres with wire fence and has raised crops on a portion thereof for three years.

Ques. 9. What improvements are on the land and what is their value?

Ans. One house 12 x 14, one house 8 x 12, one well, ten acres fenced, some breaking.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim, and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. He is acting in good faith.

RICHARD J. STUMPFF.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 14 day of Dec., 1891.

JOHN I. DILLE, *Reg.*

(See note on fourth page.)

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

26 (4–369.)

Homestead Proof. Testimony of Witness.

HARPER J. CUNNINGHAM, being called as witness in support of the homestead entry of 4 for Ransom Payne, testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. Harper J. Cunningham.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town or used in any way for trade or business?

Ans. Yes; part of East Guthrie is located on it.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Good arable land, suitable for farming.

Ques. 5. When did claimant settle upon the homestead and at what date did he establish actual residence thereon?

Ans. He built his residence and has lived upon the land continuously since July 1st, 1889.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. He has resided there himself continuously. I know nothing of his family.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and, if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Only for short periods, attending to his business of U. S. deputy marshal.

Ques. 8. How much of the homestead has the settler cultivated and for how many seasons did he raise crops thereon?

Ans. He has enclosed about ten acres and has raised crops thereon for three seasons.

Ques. 9. What improvements are on the land and what is their value?

Ans. One house 12 x 14, one house 8 x 12, wire fence, well, etc.; all of the value of about $185.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim, and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I think he is acting in good faith.

HARPER J. CUNNINGHAM.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 14 day of Dec., 189–.

JOHN I. DILLE, *Reg.*

(See note on fourth page.)

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

27 (4–369.)

Homestead Proof. Testimony of Claimant.

RANSOM PAYNE, being called as a witness in his own behalf in support of homestead entry No. 4, for northwest quarter sec. 9, T. 16, R. 2 W., testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. Ransom Payne.

Ques. 2. Are you a native-born citizen of the United States; and, if so, in what State or Territory were you born?*

Ans. Yes; born in Wapello Co., Iowa.

Ques. 3. Are you the identical person who made homestead entry No. 4 at the Guthrie land office on the 23rd day of April, 1889, and what is the true description of the land now claimed by you?

Ans. Northwest quarter of section No. nine (9), township No. 16 N., of R. No. 2 W., I. M. I am the same person.

Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. I staid continuously on the land from the 22nd of April, 1889, and on the 11th day of May erected a house 12 x 14, one room; the other 8 x 12; value, $75.00; 10 acres fenced with good post-and-wire fence; value, including labor, $100. A well cost $10.00.

Ques. 5. Of whom does your family consist, and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. Wife and little daughter. They have not resided with me on the land for the reason that my wife is a confirmed invalid and would not remove to the land. Newport, Ky., is her residence.

Ques. 6. For what period or periods have you been absent from the homestead since making settlement and for what purpose, and, if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. My residence upon the land has been continuous. I have been absent at different times, attending to my duties as U. S. deputy marshal, for short periods.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. All that has not been occupied by trespassers; about 10 acres. I have raised crops thereon for three seasons.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town or used in any way for trade and business?

(* In case the party is of foreign birth a certified transcript from the court records of his declaration of intention to become a citizen or of his naturalization, or a copy thereof certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases.)

Ans. Yes; a large portion is settled upon by trespassers for town-site purposes.

Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality and for what purpose it is most valuable.

Ans. Good arable land, suitable for farming.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None.

Ques. 11. Have you ever made any other homestead entry? (If so, describe the same.)

Ans. S. W. ¼ sec. 2, T. 29, R. 33 W., 6th P. M., Kns., which I commuted at the Garden City land office.

Ques. 12. Have you sold, conveyed, or mortgaged any portion of the land; and, if so, to whom and for what purpose?

Ans. I have not.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same and state where the same is kept.)

Ans. One horse, household effects, stock of oats kept on claim, and none elsewhere.

RANSOM PAYNE.

I hereby certify that the foregoing testimony was read to the claimant before being subscribed, and was sworn to before me this 14 day of December, 1891.

JOHN I. DILLE, *Reg.*

(See note on fourth page.)

28 [Endorsed:] (4–369.) Protest homestead proof of Ransom Payne. Land office at Guthrie, O. T'y. Original application No. 4. Final certificate No. —. Rejected for the reason that H. E. No. 4 has been cancelled by order of the Secretary of the Interior and the land within described awarded to the town-site claimants. Fees tendered. John I. Dille, register. C. M. Barnes, receiver. No. —. Received for filing Dec. 15, 1891, at Guthrie office, Ind. Ter.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Title LXX. Crimes. Ch. 4.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testi-

mony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See § 1750.)

Final Affidavit Required of Homestead Claimants.

Section — of the Revised Statutes of the United States.

I, Ransom Payne, having made a homestead entry of the 4 N. W. ¼ section No. 9, in township No. 16 N., of range No. 2 W., subject to entry at Guthrie under section No. 2289, act of May 14, 1890, of statutes of the United States, do now apply to perfect my claim thereto by virtue of section No. 21, act of May 2, 1890, of statutes of the United States, and for that purpose do solemnly swear that I, Ransom Payne, am a citizen of the United States; that I have made actual settlement upon and have cultivated and resided upon said land since the 22 day of April, A. D. 1889, to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised Statutes, but that I am the sole *bona fide* owner as an actual settler; that I will bear true allegiance to the Government of the United States, and, further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except a certain commutation proof for S. W. ¼ sec. 2, T. 29, R. 33 W., 6th P. M., at Garden City, L. D., Kns.

RANSOM PAYNE.

I, John I. Dille, of Guthrie, O., K., do hereby certify that the above affidavit was subscribed and sworn to before me this 14 day of Dec., 1891.

JOHN I. DILLE, *Reg.*

29 TERRITORY OF OKLAHOMA, *Logan County.*

In the District Court.

RANSOM PAYNE
vs.
W. S. ROBERTSON, JOHN FOSTER, ANDREW C. SCHNELL, XENOPHON FITZGERALD. } Demurrer.

Demurrer of W. S. Robertson, John Foster, and A. C. Schnell.

W. S. Robertson, John Foster, and A. C. Schnell, defendants in the above-entitled action, demur to the complaint herein for the reason that the court has no jurisdiction of the person of the defendants.

II.

Defendants demur to the complaint for the reason that the court has no jurisdiction of the subject of the action.

III.

Defendants demur to the complaint for the reason that there is a defect of parties defendant, to wit, each and every the lot claimants in and upon the northwest quarter of section 9, township 16, range 2 west, described in the complaint.

IV.

Defendants demur to the complaint for the reason that it does not state cause sufficient to constitute a cause of action.

V.

Defendants demur to said complaint for the reason that several causes of action are improperly joined therein.

30 NOTE.—The objections to the complaint in this cause are substantially the objections to the complaint in the case of Veeder B. Payne *vs.* these defendants and the case of Xenophon Fitzgerald *vs.* these defendants. The difference, however, in the objections in those cases and the complaint in this case shows that Ransom Payne entered Oklahoma Territory as a deputy U. S. marshal under the act of Congress and the proclamation of the President of the United States under which the country was opened and prior to noon of April 22nd, 1889, and that while in the Territory he considered the question of taking a homestead in the Territory and was conversant with all the questions raised by himself and others whether being in the Territory before the opening would disqualify him from taking a homestead. The complaint asserts that because of assurances which others received from the officials of the Government that he determined not to go out of the Territory, but to remain in the country and take up his claim after noon of April 22, the day of the opening; that under these conditions he remained in the Territory as marshal, executing the duties of his office, until 12 o'clock noon of the day, at which time he immediately entered upon said quarter section of land and claimed the same as his homestead; that on the day thereafter he made entry at the land office; that thereafter, at a date not stated, he begun a house on the land and enclosed a part of the land, but whether it was a few feet or a few inches or whatever quantity he enclosed does not appear; he does not pretend, however, that he enclosed all of the land or attempted to do so; that he began
31 on the 22nd of April to dig a well, but whether he ever continued or for what purpose he began the well, or whether he began it in good faith, does not appear, nor does it appear that the well was ever completed.

Plaintiff does not claim that he was the first settler upon the land,

nor does he claim that the land was not at the time he went upon it occupied for town-site purposes.

The complaint does not pretend that the plaintiff waited a sufficient length of time after noon to give other persons who started from the north line of the Territory at noon of the opening day, and, using due diligence, time to reach the land by the time he entered thereon.

The court will take judicial cognizance of the matter of the distance it is from the outer line of the Territory opened and of the fact that the plaintiff must have known at the time he went upon the land that it was impossible for the persons starting fairly from the outer lines to reach the land in controversy by the time he would enter thereon. The court must therefore take judicial cognizance of the fact that the plaintiff had by reason of his official position and being in the country an unfair advantage of persons not in official positions, who were held out of the country by act of Congress and the President's proclamation. It has been repeatedly decided that persons in the Territory by reason of their official positions are within the purview of the act of Congress and the
32 President's proclamation and will not be permitted to avail advantages open to them by reason of their official position, and thus outstrip citizens, not officers, held at the outer line until noon of the opening day.

HORACE SPEED,
United States Attorney.

33 UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, }

September Term, 1893, First Judicial District, Logan County, Number 898, United States District Court.

RANSOM PAYNE
vs.
JOHN FOSTER *et al.*

Be it remembered that on this the 9th day of January, A. D. 1893, this case came up for determination on defendants' demurrer filed herein. The court having at a prior time heard all the arguments of the plaintiff'- and defendants' attorneys on defendants' demurrer to plaintiff's bill filed herein, and the court, being fully and sufficiently advised in the premises, does now order and adjudge that the said demurrer of the defendants be, and hereby is, sustained; and it is further ordered and adjudged and decreed by the court aforesaid that the said plaintiff's bill filed in said case be, and the same hereby is, dismissed at the cost of the said plaintiff. To this order and decree of the court the plaintiff does now, by his attorney, except, and prays an appeal to the supreme court of the Territory of Oklahoma; whereupon the court does now grant the said appeal, as prayed by the said plaintiff, to the supreme court of said Territory, and does hereby fix appellant's appeal bond in the sum of two hundred dollars ($200.00), and orders that the said bond

be filed by January 14th, subject to the approval of the clerk of this court.

—— ——, *Judge.*

—— ——, *Clerk.*

34 (Original.)

Appeal Bond, District Court.

Know all men by these presents that we, Ransom Payne, as principal, and Harper S. Cunningham and Veeder B. Paine, residents of Logan county, Oklahoma Territory, as sureties, are held and firmly bound unto the clerk of the supreme court of the Territory of Oklahoma in the penal sum of two hundred dollars ($200.00); for the payment of, which, well and truly to be made, we do hereby bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Signed and dated this 11th day of January, A. D. 1893.

Whereas on the ninth day of January, 1893, Ransom Payne, of the city of Guthrie, Oklahoma Territory, did pray and was by the Hon. E. B. Green, judge of the district court, granted an appeal to the supreme court of said Territory from the judgment rendered in the said district court in the case of Ransom Payne *vs.* John Foster *et al.*, wherein the said Ransom Payne was plaintiff and John Foster *et al.* defendant-, wherein the said Ransom Payne had filed his bill praying for a decree from the said district court commanding the said John Foster *et al.* to make and deliver to him a deed to the northwest ¼ of section 9, township 16, range 2 west:

Now, therefore, the condition of this obligation is such that if the above-bounden plaintiff shall pay or cause to be paid all costs that may be adjudged against him and to pay the same provided they cannot be collected otherwise in the above-named court or any court to which his said appeal may be carried, then this obligation

35 to be void; otherwise to remain in full force and effect.

(Signed) RANSOM PAYNE.
HARPER S. CUNNINGHAM.
VEEDER B. PAINE.

Filed and approved by me this 11th day of January, 1893.

THEODORE G. RISLEY,
Clerk U. S. District Court.

(Endorsed on back:) Filed January 11th, 1893. Theodore G. Risley, clerk.

36 TERRITORY OF OKLAHOMA, } ss:
County of Logan. }

In the District Court.

RANSOM PAYNE, Plaintiff,
vs.
JOHN FOSTER *et al.*, Defendants. } Præcipe for Transcript.

To the clerk:

Please make transcript of the record in this case, including the following, viz:

The complaint, demurrer to complaint, the decree of the court, and the bond for appeal.

AMOS GREEN &
HARPER S. CUNNINGHAM,
Attorneys for Plaintiff.

37 UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, Logan County, }

In the District Court of said County.

I, Theodore G. Risley, clerk of the United States district court and the district court of Logan county within and for the first judicial district of Oklahoma Territory, do hereby certify that the attached and foregoing is a true, perfect, correct, and complete copy of the original complaint, together with the exhibits thereto attached, the demurrer, decree of the court, appeal bond, and the præcipe, now on file and of record in my office, in the city of Guthrie, in the case of Ransom Payne *vs.* John Foster *et al.*, as the same was ordered by a written præcipe filed by Harper S. Cunningham on the 9th day of January, A. D. 1893, attorney for Ransom Payne, appellant in said action.

Witness my hand and the seal of said court, at my office, in the city of Guthrie, this 11th day of January, A. D. 1893.

THEODORE G. RISLEY,
Clerk District Court.

38 TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

In the Supreme Court for the Territory Aforesaid, of the June Term, 1893.

RANSOM PAYNE (Appellant)
against
JOHN FOSTER *et al.* (Appellees). } Assignment of Errors.

And now comes the appellant and makes the following assignment of errors, which intervened in the trial of the above-entitled case in the district court of the first judicial district, sitting within and for said county of Logan, at the September term, 1892, of said

court, and on the 9th day of January, A. D. 1893, of said term, when said cause came on to be heard on plaintiff's (here appellant's) said complaint and exhibits thereto attached and the demurrer interposed by the defendants (here appellees) to said complaint, and upon which assignment of errors he asks that the judgment of the court below sustaining said demurrer and dismissing plaintiff's (here appellant'-) said bill of complaint and rendering judgment against him for costs be reversed and set aside, and that the case be remanded to the court below, with directions to overrule said demurrer.

39 First. The court below erred in sustaining the demurrer to plaintiff's said complaint, and in dismissing the plaintiff's (here appellant's) said complaint and rendering judgment against him for costs.

Second. The demurrer admits that the appellant came into the Oklahoma country as a deputy marshal of the United States, in the rightful discharge of his duties as such deputy marshal and in obedience to the instructions of his superior officer, the United States marshal for the district of Kansas, which said district embraced the territory to be opened on the 22nd day of April, 1889, at twelve o'clock noon of said day.

That at said hour when said lands described in appellant's complaint were opened to settlement, at the hour and on the day aforesaid, the appellant was duly and legally qualified to take and hold a homestead in said lands so opened to settlement, and that after said hour when said lands were duly opened he did go upon the tract of land described in his said complaint and make settlement thereon as his homestead; that he was the first and prior settler on said tract of land, and that at the time he went upon it and made said settlement it was open to settlers and subject to entry as a homestead.

That on the 23rd day of April, 1889, at the United States land office located at Guthrie, in said Territory, he duly entered said tract of land as his homestead, and paid the Government dues and price therefor, and received the duplicate receipt of the register of said land office; that since his said settlement and entry as

40 aforesaid of said tract of land he has resided upon and improved the same as his homestead, and still so resides upon it, and has in all respects complied with the requirements of the homestead laws; that he, after one year's residence thereon, made due proof before the register and receiver of the United States land office at Guthrie, Oklahoma — tendered to the receiver the commutation price of said land, one dollar and twenty-five cents per acre, and all legal fees; on which admitted facts under the laws the appellant has the superior equity and right to said tract of land, and the court erred upon the aforesaid admitted facts in not overruling the defendants' said demurrer to the said complaint, and in dismissing said bill of complaint and rendering judgment for costs against this appellant.

Third. The court below erred in holding that the allegations contained in appellant's said bill of complaint were not sufficient in law

and equity to entitle said appellant to the relief prayed for in said complaint, and in sustaining appellees' demurrer to the same.

Fourth. The court below erred in holding that on the facts as set out in the complaint the appellant was not a competent and qualified entryman of said land.

Fifth. Under the act of Congress of March 2nd, 1889, and the proclamation of the President, issued in pursuance thereof, it requires both an entry and an occupancy of some tract or parcel of the land to be opened under said act to disqualify any person from ever taking a homestead or acquiring any rights under said
41 law, and on the facts set out in appellant's said complaint and admitted by the demurrer of appellees the appellant was a duly qualified entryman, never having, as alleged in said complaint, in any manner violated the provisions of said act of Congress, and the court erred in sustaining said demurrer.

Sixth. The appellant's presence in said Territory during the prohibited period as an officer of the United States and in the discharge of his duty was not a violation of the act of Congress of March 2nd, 1889, or any other act of Congress; the officers of the United States whose duties required their presence being that of the Government is not embraced in said prohibitory clause of said act, and such presence and entry was and is no violation of any provision of said act and creates no disqualification whatever, and the appellant, on the admitted allegations of said complaint, being in no manner disqualified and having violated no provision of the said act in being in said Territory in discharge of his official duties as a United States deputy marshal.

The court below erred in not overruling said demurrer and in sustaining the same.

AMOS GREEN & SON &
HARPER S. CUNNINGHAM,
Att'ys for Appellant.

42 To T. G. Risley, clerk, for making transcript, 8,900 words at 10 cents per folio..... $8 90
Drafting and executing appeal bond..... 50
Certificates to transcript..... 25

Total..... $9 65

(Endorsed on back:) Transcript. Ransom Payne *vs.* John Foster *et al.* Transcript and assignment of errors. Filed June 1, 1893. C. H. Filson, clerk. Amos Green & Son & Harper S. Cunningham, att'y- for appellant.

43 TERRITORY OF OKLAHOMA:

In the Supreme Court.

RANSOM PAYNE
vs.
JOHN FOSTER, WILLIAM S. ROBERTSON, and A. C. SCHNELL *et al.*, Defendants. } Joinder in Error.

The defendants John Foster, William S. Robertson, and A. C. Schnell for answer to the petition in error herein say that there is no error in the proceedings in the court below.

HORACE SPEED,
Attorney for Defendants.

(Endorsed on back:) Supreme court. Ransom Payne *vs.* John Foster *et al.*, town-site trustees. Answer in error. Filed June 27, 1893. C. H. Filson. Horace Speed, U. S. att'y, for def'ts.

44 UNITED STATES OF AMERICA, } *Territory of Oklahoma.* }

Be it remembered that on the twenty-third day of June, in the year of our Lord one thousand eight hundred and ninety-three, the supreme court of the Territory of Oklahoma met in the city of Guthrie, the same being the fifth day of the June term of said court.

There were present Hon. E. B. Green, chief justice; Hon. John H. Burford and Hon. Frank Dale, associate justices; Horace Speed, Esq., United States attorney, attorney for the Territory; J. F. Stone, Esq., ass't United States attorney; William Grimes, marshal; Chas. H. Filson, clerk, and R. C. Blue, crier.

Public proclamation of the opening of the court being made by the crier, the following (among other) proceedings were had:

RANSOM PAYNE, Appellant,
vs.
JOHN FOSTER *et al.*, Appellees. } No. —.

And now comes John F. Stone, Esq., counsel for appellees, and moves the court that a rule be entered against appellants herein, requiring them to answer; thereupon a rule was entered and appellants were given until June 28, 1893, in which to file answer; and, further, that on June thirtieth, 1893, being also one of the judicial days of the June term of said court, this cause came
45 on for decision, it being agreed by the parties hereto that this cause be submitted for the consideration of the court on the transcript of the record and errors therein assigned, without argument and without the filing of briefs; thereupon the court made the following order, to wit:

RANSOM PAYNE, Appellant,
v.
JOHN FOSTER, W. S. ROBERTSON, A. C. SCHNELL, and XENOPHON FITZGERALD, Appellees.
} Appeal from Logan.

Per Curiam:

This was a bill in chancery, in the district court of Logan county, brought by appellant against the appellees, for the purpose of obtaining title to the northwest quarter of section nine, township sixteen, range two west, being a part of the town site of what was formerly East Guthrie and now included in the town site of the city of Guthrie, in the county of Logan and Territory of Oklahoma.

A demurrer was interposed in the court below, raising the question of the qualification of appellant as a homestead entryman under the act of Congress of March 2, 1889, and was sustained to
46 appellant's bill of complaint, and a decree was rendered on the demurrer dismissing the bill at appellant's costs and wholly denying the relief prayed for, and the record is brought into this court by appeal and the action of the court below on the demurrer is assigned for error.

This case is in some particulars similar to the case of Smith *v.* Townsend, 1 Oklahoma Rep., 117. Appellant was a deputy United States marshal and in the line of duty at 12 o'clock noon of April 22, 1889, and claims that he is not disqualified by reason of being within the limits of the lands which were opened to settlement by the proclamation of the President at that hour; but in the same case of Smith *v.* Townsend, recently heard and affirmed in the Supreme Court of the United States, in the construction of the acts of Congress of March first and second, 1889, that court has brought appellant within the disqualifying provisions of those acts, and it must be so held by this court upon the authority of that case, and the decree of the district court will be affirmed, with costs.

Decree Affirmed.

RANSON PAYNE, Appellant,
vs.
JOHN FOSTER *et al.*, Appellees.

And now, on this day, it being the 30th day of June, A. D. 1893, and one of the judicial days of the June term of this court, the parties appeared by their respective attorneys, and, the court having heretofore taken this cause under advisement, it is considered by the court that the judgment and decree of the district court of Logan county be, and the same is, in all things affirmed, and that the appellant in this cause pay the costs of this court, to be taxed by the clerk, and thereof let execution issue.

To which judgment the appellant then and there excepted and prayed an appeal to the Supreme Court of the United States; which prayer was granted, conditioned upon the filing by appellant of a

bond in the sum of five hundred dollars, with sureties to be approved by the clerk of the court. Thirty days was allowed appellant in which to perfect said appeal.

47 TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

In the Supreme Court for the Territory Aforesaid, of the June Term, 1893.

RANSOM PAYNE, Appellant, }
against } Assignment of Errors.
JOHN FOSTER *et al.*, Appellees. }

And now comes the appellant and makes the following assignment of errors which intervened on the trial and hearing of the above-entitled cause in the supreme court of said Territory, and upon which assignment of errors he asks that the judgment of the said supreme court be reversed and set aside, and that the case be remanded:

48 First. The court below erred in sustaining the demurrer to plaintiff's said complaint and in dismissing the plaintiff's (here appellant's) said complaint and rendering judgment against him for costs.

Second. The demurrer admits that the appellant came into the Oklahoma country as a deputy marshal of the United States in the rightful discharge of his duties as such deputy marshal and in obedience to the instructions of his superior officer, the United States marshal for the district of Kansas, which said district embraced the Territory to be opened on the 22nd day of April, 1889, at twelve o'clock noon of said day.

That at said hour when said lands described in appellant's complaint were opened to settlement, at the hour and on the day aforesaid, the appellant was duly and legally qualified to take and hold a homestead in said lands so opened to settlement, and that after said hour when said lands were so duly opened he did go upon the tract of land described in his said complaint and make settlement thereon as his homestead; that he was the first and prior settler on said tract of land, and that at the time he went upon it and made said settlement it was open to settlers and subject to entry as a homestead.

That on the 23rd day of April, 1889, at the United States land office located at Guthrie, in said Territory, he duly entered said tract of land as his homestead and paid the Government dues and price therefor and received the duplicate receipt of the register of said land office; that since his said settlement and entry as aforesaid of said tract of land he has resided upon and improved the same as his homestead, and still so resides upon it, and has
49 in all respects complied with the requirements of the homestead laws; that he, after one year's residence thereon, made due proof before the register and receiver of the United States land

office at Guthrie, Oklahoma, — tendered to the receiver the commutation price of said land, one dollar and twenty-five cents per acre, and all legal fees; on which admitted facts, under the laws, the appellant has the superior equity and right to said tract of land, and the court erred upon the aforesaid admitted facts in not overruling the defendants' said demurrer to the said complaint and in dismissing said bill of complaint and rendering judgment for costs against this appellant.

Third. The court below erred in holding that the allegations contained in appellant's said bill of complaint were not sufficient in law and equity to entitle said appellant to the relief prayed for in said complaint, and in sustaining appellees' demurrer to the same.

Fourth. The court below erred in holding that on the facts as set out in the complaint the appellant was not a competent and qualified entryman of said land.

Fifth. Under the act of Congress of March 2nd, 1889, and the proclamation of the Presidents issued in pursuance thereof, it requires both an entry and an occupancy of some tract or parcel of the land to be opened under said act to disqualify any person from even taking a homestead or acquiring any rights under said law, and on the facts set out in appellant's said complaint and admitted by the demurrer of appellees the appellant was a duly qualified entryman, never having, as alleged in said complaint, in any manner violated the provisions of said act of Congress, and the court erred in sustaining said demurrer.

50

Sixth. The appellant's presence in said Territory during the prohibited period as an officer of the United States and in the discharge of his duty was not a violation of the act of Congress of March 2nd, 1889, or any other act of Congress, the officers of the United States whose duties required their presence being that of the Government is not embraced in said prohibitory clause of said act, and such presence and entry was and is no violation of any provision of said act and creates no disqualification whatever, and the appellant on the admitted allegations of said complaint being in no manner disqualified and having violated no provision of the said act in being in said Territory in discharge of his official duties as a United States deputy marshal.

The court below erred in not *oeve*-ruling said demurrer and in sustaining the same.

[Endorsed:] Ransom Payne *vs.* John Foster *et al.* Assignment of errors in supreme court.

51

Know all men by these presents that we, Ransom Payne, as principal, and Vedar B. Paine, as surety, are held and firmly bound unto W. S. Robertson, John Foster, A. C. Schnell, and Xenophon Fitzgerald in the full and just sum of five hundred dollars ($500), to be paid to the said W. S. Robertson, John Foster, A. C. Schnell, and Xenophon Fitzgerald, their heirs, executors, administrators, or assigns; to which payment, well and truly to be

made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of July, 1893.

Whereas lately, at the June term of the supreme court of the Territory of Oklahoma, in a suit depending in said court between Ransom Payne, plaintiff, and W. S. Robertson, John Foster, A. C. Schnell, and Xenophon Fitzgerald, defendants, judgment was rendered against the said Ransom Payne, and the said Ransom Payne has taken an appeal from the aforesaid court to reverse the judgment in the aforesaid suit to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said Ransom Payne shall prosecute said appeal to effect and answer all costs if he fail to make good said appeal, then the above obligation to be void; else to remain in full force and virtue.

In witness whereof we have hereunto set our hands and seals this 28 day of July, 1893.

RANSOM PAYNE. [SEAL.]
VEEDER B. PAINE. [SEAL.]
—— ——. [SEAL.]

Approved July 28, 1893.
CHAS. H. FILSON, *Clerk.*

52 (Endorsed on back:) Ransom Payne *vs.* W. S. Robertson, John Foster, A. C. Schnell, and Xenophon Fitzgerald. Filed July 28, 1893. C. H. Filson, clerk. Appeal bond.

53 UNITED STATES OF AMERICA, }
Territory of Oklahoma. }

I, Chas. H. Filson, clerk of the supreme court of the Territory of Oklahoma, certify the foregoing to be a full, true, and complete copy of the record, files, and orders of this court as the same appears on file and on the records of the court.

Seal Supreme Court, Territory of Oklahoma.

Witness my hand and the seal of the court. Done at Guthrie this 28th day of July, A. D. 1893.

CHAS. H. FILSON,
Clerk Supreme Court.

Endorsed on cover: Case No. 15,618. Oklahoma Territory supreme court. Term No., 126. Ransom Payne, appellant, *vs.* W. S. Robertson, John Foster, A. C. Schnell, and Xenophon Fitzgerald. Filed July 2, 1894.